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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

Tax Case (Reference) Nos.87 to 94 of 2001

The Commissioner of Income Tax
Coimbatore. ..Applicant in all T.Cs.

Vs.

M/s. Sakthi Finance Ltd.
Coimbatore. ..Respondent in all T.Cs.

For Applicant :: Mr.T.Ravikumar
For Respondent :: Mr.R.Vijayaraghavan

Tax cases referred to the High Court by the Income-Tax Appellate Tribunal under section 256(1) of the Indian Income Tax Act 1992 (Act XI of 1992) in R.A Nos.253 to 260/Mds/97 in I.T.A. Nos.3206/Mds/90, 1996/Mds/91, 2175/Mds/95, 2174/Mds/93, 1573/Mds/96, 1574/Mds/96, 1338/Mds/96 and 2586/Mds/92 for the assessment years 1987-88, 1988-89, 1990-91, 1991-92, 1992-93, 1993-94 and 1989-90 on its file for decision on the following questions of law viz.,

(i) "Whether on the facts and in the circumstances of the case, the Tribunal was right in law and had valid material to come to the conclusion that the lesess were aware that what they paid was only contingent deposit and that it was to be returned to them if the sales tax levy on the assessee were to be declared as unconstitutional. When there is no reference to the fact in the bills issued by the assessee to the leasee and when there is no material on recod apart from a unilateral letter which does not confer any contractual right on the lessee, leading to the conclusion that the lessee was award of his legal right to receive such refund ?"

(2) "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the amounts collected by the assessee from lessess towards sales tax represented only contingent deposits?"

(TC(R) NOS. 87 and 93 of 2001)

(i) "Whether on the facts and in the circumstances of the case, the Tribunal was right in law and had valid material to come to the conclusion that the lessess were aware that what they paid was only contingent deposit and that it was to be returned to them if the sales tax levy on

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the assessee were to be declared as unconstitutional. When there is no reference to the fact in the bills issued by the assessee to the leasee and when there is no material on record apart from a unilateral letter which does not confer any contractual right on the lessee, leading to the conclusion that the lessee was award of his legal right to receive such refund ?"

(2) "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the amounts collected by the assessee from lessess towards sales tax represented only contingent deposits and therefore quashing the directions of the commissioner of Income-tax under Sec. 263 on this issue?"

(TC(R) NOS. 88 of 2001)

1) "Whether on the facts and in the circumstances of the case, the Tribunal was right in law and had valid material to come to the conslusion that the lessess were aware that what they paid was only contingent deposit and that it was to be returned to them if the sales tax levy on the assessee were to be declared as unconstitutional when there is no rerefence to the fact in the bills issued by the assessee to the lessee and when there is no material on record apart from a unilateral letter which does not confer any contractual right on the lessee, leading to the conclusion that the lessee was aware of his legal right to receive such refund?"

2) "Whether, on the facts and in the circumsances of the case, the Tribunal was right in law in holding that the amount collected by the assessee from lessee towards sales-tax represented only contingent deposits?"

3) "Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that the assessee is entitled as revenue deduction under Sec.37(1) the expenditure incurred by it in patitions, false ceiling etc. in the assessee's own premises used for housing lockers?'

4) "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee is entitled to depreciation at the rate aplicable to a plant at 33 1/3 on its buildings housing the sale deposit lockers?"

(TC(R).No.89 of 2001)

(1) "Whether on the facts and in the circumstances of the case, the Tribunal was right in law and had valid material to come to the conclusion that the lessees were aware that what they paid was only contingent deposit and that it was to be returned to them if the sales tax levy on the assessee were to be declared as unconstitutional, when there is no reference to the fact in the bills issued by the assessee to the lessee and when there is no material on record apart from a unilateral letter

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which does not confer any contractual right on the lessee, leading to the conclusion that the lessee was aware of his legal right to receive such refund?"

2)"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the amount collected by the assessee from lessees towards sales tax represented only contingent deposits (and therefore questioning the directions of the Commissioner of Income-Tax under section 263 on this issue?")

3) " Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that the assessee is entitled as revenue deduction under sec.37(1) the expenditure incurred by it in partitions, false ceiling etc. in the assessee's own permises used for housing lockers?"

4)" Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee is entitled to depreciation at the rate applicable to a plant at 33 1/3% on its buildings housing the safe deposit lockers?"

5." Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the expenditure incurred on false ceiling, partition etc. in the assessee's lease hold premises were revenue in nature?"

(TC (R) No.90 of 2001)

[1] “Whether on the facts and in the circumstances of the case, the Tribunal was right in law and had valid material to come to the conclusion that the lessees were aware that what they paid was only contingent deposit and that it was to be returned to them if the sales tax levy on the assessee were to be declared as unconstitutional, when there is no reference to the fact in the bills issues by the assessee to the lessee and when there is no material on record apart from a unilateral letter which does not confer any contractual right on the lessee, leading to the conclusion that the lessee was aware of his legal right to receive such refund?”

[2] “Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the amount collected by the assessee from lessees towards sales tax represented only contingent deposits [and therefore questioning the directions of the Commissioner of Income-tax under Section 263 on this issue?”

[3] “Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee is entitled as revenue deduction under Section 37[1] the expenditure, incurred by it in partitions, false ceiling etc. in the assessee's own premises used for housing lockers?”

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[4] "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee is entitled to depreciation at the rate applicable to a plant at 33 1/3% on its buildings housing the safe deposit lockers?" [TC[R] No.91/2001]

1. "whether on the facts and in the circumstances of the case, the Tribunal was right in law and had valid material to come to the conclusion that the lessees were aware that what they paid was only contingent deposit and that it was to be returned to them if the sales tax levy on the assessee were to be declared as unconstitutional, when there is no reference to the fact in the bills issued by the assessee to the lessee and when there is no material on record apart from a unilateral letter which does not consider any contractual right on the lessee, leading to the conclusion that the lessee was aware of his legal right to receive such refund?"

2. "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the amounts collected by the assessee from lessees towards sales-tax represented only contingent deposits?"

3. "Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that the assessee is entitled to depreciation at the rate applicable to a plant at 33 1/3% on its buildings housing the safe deposit lockers?"

(TC (R) Nos. 92 and 94 of 2001)

arising out of order dated 17.8.1995, 29.9.1995, 14.9.1992, 13.7.93, 12.10.1995 and 4.6.1996 in ITA.Nos.290-C & 291-C for the Assessment years 94-95, 290-C & 291-C for the Assessment year 94-95; 545-C for the Assessment year 92-93, 138-C for the Assessment year 93-94 292 G for the Assessment year 94-95 256A-C for the Assessment year 95-96 127-C for the Assessment year 96-97 on the file of the Commissioner of Income Tax (Appeals) Coimbatore respectively as against order date 30.3.94, 30.3.94, 27.3.1992, 30.3.1993, 30.3.1994, 28.5.95 and 22.3.1996 in PAN/GIR.No.CU-0166 for the Assessment year 87-88, PAN/GIR.No.C2-0166 for the Assessment year 88-89, PAN/GIR.No.C2-0166 for the Assessment year 89-90, PAN/GIR.No.C2-0166/SR I/CBE for the Assessment year 90-91, PAN/GIR.No.C2-0166 for the Assessment year 91-92, PAN/GIR.No.C2-0166/SRI/CBE for the Assessment year 92-93, PAN/GIR.No.CU-0166/SRI/CBE for the Assessment year 93-94, on the file of the Deputy Commissioner of Income Tax, Spl Range I, Coimbatore respectively.

These referebce cases coming on for hearing on this day upon perusing the order of Reference of the Income-Tax Appellate Tribunal Ms 'B' Bench dated 24.01.2001. The Statement of the case dated 17.12.1999 submitted by the Income-Tax Appellate Tribunal and the Record in the case and upon hearing the arguments of Mr.T.Ravikumar Special Counsel for Income-Tax on

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behalf of the Applicant in TCs and of Mr.r.Vijayaraghavan, Advocate for the Respondent in all TCs the Court delivered the following Judgment.

J U D G M E N T

(Delivered by P.D.DINAKARAN,J.)

T.C.(R) No.87 of 2001 has been preferred against R.A.No.253/Mds/97 with reference to the assessment year 1987-88, T.C.(R) No.88 of 2001 has been preferred against R.A.No.254/Mds/97 with reference to the assessment year 1988-89, T.C.(R) No.89 of 2001 has been preferred against R.A.No.255/Mds/97 with reference to the assessment year 1988-89, T.C.(R) No.90 of 2001 has been preferred against R.A.No.256/Mds/97 with reference to the assessment year 1990-91, T.C.(R) No.91 of 2001 has been preferred against R.A.No.257/Mds/97 with reference to the assessment year 1991-92, T.C.(R) No.92 of 2001 has been preferred against R.A.No.258/Mds/97 with reference to the assessment year 1992-93, T.C.(R) No.93 of 2001 has been preferred against R.A.No.259/Mds/97 with reference to the assessment year 1993-94 and T.C.(R) No.94 of 2001 has been preferred against R.A.No.260/Mds/97 with reference to the assessment year 1989-90.

2. The above batch of references has been made under Section 256(1) of the Income-tax Act, 1961, by the Income-tax Appellate Tribunal, Chennai Bench 'B', at the instance of the Commissioner of Income-tax, Coimbatore, raising substantial questions of law, referred to and dealt with hereunder, arising out of the common order dated 10.1.1997 of the Income-tax Appellate Tribunal, Chennai Bench 'B'. In pursuance of the directions of this Court, the Income-tax Appellate Tribunal has stated a case.

T.C.(R) Nos.87 of 2001 and 93 of 2001 (R.A.Nos.253 and 259/Mds/97 with reference to the assessment years 1987-88 and 1993-94:

3.1. In respect of T.C.(R) Nos.87 of 2001 and 93 of 2001 with reference to the assessment years 1987-88 and 1993-94, the Tribunal has referred the following question of law for our consideration:

> "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the amounts collected by the assessee from lessees towards sales tax represented only contingent deposits ?"

3.2. During the relevant assessment years, the assessing officer added the contingent deposit collected by the assessee as a business income, even though the assessee claimed the contingent deposit as a revenue receipt. According to the assessee, the contingent deposit collected by them could not be assessed to tax as a part of trading receipt, as the said deposit does not belong to the assessee at all and is meant for the payment of sales tax proposed to be levied by the State Government. On the other hand, the Revenue contended that the amount collected as contingent deposit towards the sales tax payable by the

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assessee is still open to be assessed to tax, since till such sales tax is paid by the assessee out of the contingent deposit, such deposit forms part of the assessee's income. But the assessing officer invoking Section 43B of the Income-tax Act, 1961, disallowed the claim of the assessee holding that the contingent deposit is nothing but sales-tax collected from the lessees on lease rentals and not paid to the Government and hence, it has to be disallowed under Section 43B and accordingly, added the contingent deposit to the assessee's income.

3.3. Aggrieved by the said order of the assessing officer, the assessee preferred appeals before the Commissioner of Income-tax (Appeals) who, by order dated 17.8.1995, upheld the disallowance of the claim of the assessee. The Commissioner observed that it is not disputed that the Tamilnadu Sales-tax Department has levied the said tax on the appellant in respect of its lease rentals received from the customers. The amount of tax payable has also been quantified and the like amount has also been collected from the customers as a measure of precaution. The commissioner further observed that in the event of the appellant's claim of exemption from the said liability is ultimately upheld and became final then the customers might get the amount paid by them individually refunded to them under a contractual obligation. The Commissioner also observed that the statutory liability is never a contingent liability and it will not cease to exist by reason of the fact that the taxpayer is disputing the liability. But, the statutory liability ceased to exist when a competent court strikes down the vires of the provisions imposing the levy of sales tax on lease rentals. The Commissioner further observed that even though this Court stayed the operation of the provision of sales tax in respect of lease rentals in a writ petition filed by the assessee, the same has not been finally disposed of and in the case of a contractual liability, the liability will accrue only in the year in which the dispute is finally settled between the parties. But, the Commissioner distinguishes the said proposition with the statutory liability, as it is not even a case where the collection was made towards possible proceedings by the sales tax department and it is the collection of a quantified amount as per the actual proceedings of the sales tax department. The Commissioner, ultimately, held that though the assessee called it as contingent deposit, the same cannot be accepted because the customers when they paid the amounts they have paid with the awareness that what they paid is towards the possible sales tax on lease rentals and accordingly, held that as per section 43B of the Act, inasmuch as the collected amount has not been paid towards the credit of the Government, the disallowance has been rightly made. The Commissioner also observed that if the assessee ultimately succeed in their dispute and refund the collected amount to the customers, it is open to them to claim the deduction of the amount appropriately in that year.

3.4. However, on further appeals by the assessee against the said order of the Commissioner dated 17.8.95, the Income-tax Appellate Tribunal, by order dated 10.1.1997, recording the undertaking given by the assessee that they would refund the amount if the proposed levy of sales tax was struck down as unconstitutional by the Courts, held that the

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Revenue was not at all justified in disallowing the contingent deposit invoking Section 43B and also held that the said amount cannot be treated as business receipt and accordingly, directed the assessing officer to delete the addition.

3.5. It is against the said order of the Tribunal, at the instance of the Commissioner of Income-tax, the Tribunal has stated a case and referred the question of law referred to above.

4. Mr.T.Ravikumar, learned standing counsel appearing on behalf of the Revenue, relied upon the decision of this Court in COMMISSIONER OF INCOME-TAX v. SOUTHERN EXPLOSIVES CO. [(2000) 242 I.T.R. 107] and contended that the assessee having collected the amount to meet its statutory liability towards sales tax proposed to be levied by the State Government on lease rentals and kept it as contingent deposit and having not paid the same to the State Government, that amount cannot be claimed as a deduction, as the amount so collected partake of the character of trading receipt and so long as it remains with the assessee, deduction cannot be allowed and it should be treated as income of the assessee.

5. On the other hand, the learned counsel appearing for the assessee relying on the decision of the Apex Court in K.C.P. Limited v. COMMISSIONER OF INCOME-TAX [(2000) 245 I.T.R. 421] as well as the decision of this Court in COMMISSIONER OF INCOME-TAX v. ARYA VAIDHYA PHARMACY (CBE) LTD. [(2006) 284 I.T.R. 335], contended that as the contingent deposit collected by the assessee is associated with the liability to refund, it could not be taxed as a part of the trading receipt and hence, the amount was not assessable.

6.1. Of course, it is a settled law that as long as the receipt of the amount by the assessee was clearly associated with a liability to refund the amount, such receipt of amount would not be characterised as an income and, therefore, the same cannot be taxed vide K.C.P. Ltd. v. CIT [(2000) 245 I.T.R. 421 (SC)], referred supra.

6.2. Similar issue came up for consideration before this Court in COMMISSIONER OF INCOME-TAX v. ARYA VAIDHYA PHARMACY (CBE) LTD. [(2006) 284 I.T.R. 335], where the assessee had collected sales tax at 30% and retained it as a deposit without paying it to the State Government on the ground that there was a dispute as to whether the ayurvedic medicines, viz., arishtams and asavas, manufactured by the assessee were subject to sales tax at 30% or 8% and after the decision of the Apex Court by judgment dated 15.3.1989, holding that the said medicines were taxable only at 8% with a direction to refund the excess amount to the customers to the extent it was possible and to donate the left over excess, which could not be refunded, to a charitable trust, this Court finding that the amount collected by the assessee was clearly associated with a statutory liability and if such sales tax need not be paid, the said amount had either to be refunded to the customers or transferred to the charitable trust, but the same could not be taxed as a part of the trading receipt.

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6.3. But, the facts of the present case is totally different and is identical to the facts of the case in COMMISSIONER OF INCOME-TAX v. SOUTHERN EXPLOSIVES CO. [(2000) 242 I.T.R. 107], cited supra, which is relied upon by the Revenue. In the said case, the assessee was a dealer in explosive detonators and safety fuses and apart from collecting four per cent of the price of the goods and paying it to the Government, it also collected further four per cent on the price of the goods as deposit against sales tax, as though the said explosive detonators and safety fuses might be treated as chemicals and as such higher rate of sales tax could be collected by the Government. Even though the assessing officer accepted the return of income, the Commissioner exercising his power under Section 263 of the Act, directed re-assessment and to include the additional amount collected, which, on appeal by the assessee, was negatived by the Tribunal. Hence, on a reference made to this Court, it was observed that the true character of a receipt must be judged with reference to the reasons for the collection, and the liability for meeting which the collection was made and when such liability is a statutory liability, which the assessee was required to meet, and for meeting which it was by the statute or authorities permitted to collect the amount required from its customers, the true character of the collection is a trading receipt. It was further observed that by calling a portion of the amount as deposit, it cannot be said that the assessee had constituted itself as a trustee, and therefore, the amounts received were not required to be regarded as part of its trading receipt. This Court, ultimately, held that the amounts collected by the assessee were amounts which were meant to be utilised by the assessee for meeting its tax liability and even if the assessee had paid over the entire amount received by it as deposit towards sales tax to the State Government, it would still have been open to the assessee to seek refund, if the assessee wished to claim such refund on the ground that the tax had been levied at a higher rate than the rate permissible. It was further held that the fact that the assessee had chosen to adopt the device of labelling a part of the amounts collected towards its sales tax liability as deposit could not make a difference and hence, the amount formed part of the assessee's income.

6.4. Even in the case of K.C.P. Ltd., [(2000) 245 I.T.R. 421 (SC)], cited supra, the Apex Court observed in clear terms that if the amount so collected is passed on to the State Government or refunded to the purchasers, then the assessee would be entitled to claim deduction, meaning thereby that if the assessee had not paid, such deposit can be disallowed under Section 43B of the Act, as the assessee had not discharged his liability as per Section 43B of the Act.

6.5. Accordingly, the reference with regard to the question whether the amounts collected by the assessee from lessees towards sales tax represented only contingent deposits is answered in the negative, in favour of the Revenue and against the assessee.

T.C.(R) No.88 of 2001 (R.A.No.254/Mds/97) with reference to the assessment year 1988-89:

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7.1. In respect of T.C.(R) No.88 of 2001 with reference to the assessment year 1988-89, the Tribunal has referred the following question of law for our consideration:

> "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the amounts collected by the assessee from lessees towards sales tax represented only contingent deposits and therefore quashing the directions of the Commissioner of Income-tax under sec.263 on this issue ?"

7.2. Pursuant to the order of the Commissioner under Section 263 of the Act, the assessing officer re-opened the assessment for the assessment year 1988-89 and added the amounts collected as contingent deposit towards sales tax on lease rentals, as has been done in the earlier assessment year 1987-88. The Tribunal quashed the direction of the Commissioner, following the reasons given in its earlier order for the assessment year 1987-88 and hence, the above reference.

7.3. The issue raised in the above question is already answered in T.C.(R) Nos.87 and 94 of 2001 with reference to the assessment years 1987-88 and 1993-94. Accordingly, the reference with regard to the assessment year 1988-89 is answered in the negative, in favour of the Revenue and against the assessee.

T.C.(R) No.89 of 2001 (R.A.No.255/Mds/97) with reference to the assessment year 1988-89:

8.1 In respect of T.C.(R) No.89 of 2001 with reference to the assessment year 1988-89, the Tribunal has referred the following questions of law for our consideration:

> "1. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the amounts collected by the assessee from lessees towards sales tax represented only contingent deposits and therefore quashing the directions of the Commissioner of Income-tax under sec.263 on this issue ?
>
> 2. Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that the assessee is entitled to revenue deduction under sec.37 (1) the expenditure incurred by it in partitions, false ceilings, etc. in the assessee's own premises used for housing lockers ?
>
> 3. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee is entitled to depreciation at the rate applicable to a plant at 33 1/3rd on its buildings housing the safe deposit lockers ? "

8.2. Giving effect to the order of the Commissioner under Section 263 of the Act, the claim of the assessee with regard to the amounts collected

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towards sales-tax from the lessees as contingent deposit was disallowed and added to the assessee's income by the assessing officer invoking section 43B of the Act, as the same has not been paid to the Government. The claim of the assessee for treating the civil contributions to house safe deposit lockers as 'plant' was also rejected and depreciation was not allowed at 33 1/3 %, but only at a lesser rate. The assessing officer also disallowed the claim of the assessee towards the expenditure incurred on false ceiling, internal partition, etc. for lease hold and free hold buildings as revenue in nature. On appeal, the Commissioner upheld the order of the assessing officer with regard to the last two issues and the first issue was not dealt with by the Commissioner. The Tribunal, on appeal by the assessee, held all the three issues in favour of the assessee. Hence, the present reference with the questions referred to above.

8.3. The issue referred in the first question is already answered in T.C.(R) Nos.87 and 94 of 2001 with reference to the assessment years 1987-88 and 1993-94. Accordingly, the reference with regard to the first issue is answered in the affirmative, in favour of the Revenue and against the assessee.

8.4. With respect to the issue referred in the second question, viz., whether the assessee is entitled to revenue deduction under sec.37 (1) the expenditure incurred by it in partitions, false ceilings, etc. in their own premises, on an earlier occasion, a similar issue was referred at the instance of the Revenue before this Court in COMMISSIONER OF INCOME-TAX v. OOTY DASAPRAKASH [(1999) 237 I.T.R. 902], wherein this Court held that the expenditure was incurred solely for repairs and modernising the hotel and replacing the existing components of the building, furniture and fittings, with a view to create a conducive and beautiful atmosphere for the purpose of running the business of a hotel and that the expenditure incurred was not of an enduring nature and was allowable as revenue expenditure under Section 37 of the Act.

8.5. In view of the above, the reference with regard to the second issue is answered in the affirmative, in favour of the assessee and against the Revenue.

8.6. With respect to the third issue, viz., whether the assessee is entitled to depreciation at the rate applicable to a plant at 33 1/3rd on its buildings housing the safe deposit lockers, on a reference made by the Revenue with regard to the similar issue before the Delhi High Court in COMMISSIONER OF INCOME-TAX v. PUNJAB AND SIND BANK, (2000) 244 I.T.R. 393, the Delhi High Court observed as follows:-

> " The expression "plant" must be given a wide meaning having regard to the fact that articles like books, scientific apparatus, surgical instruments are expressly included in the definition of plant. Its meaning is not confined only to an apparatus used in industry or business or manufacturing of finished goods from raw goods. In its ordinary meaning it is a

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word of wide import and it must be broadly construed. It includes any article or object, fixed or movable, live or dead, used by a businessman for carrying on his business. It would not cover the stock-in-trade of a businessman. It would also not include an article which is a part of the premises in which the business is carried on. An article to qualify as plant must have some degree of durability and that which is quickly consumed or worn out in the course of future operation or within a short time cannot properly be called plant. In the ultimate analysis the enquiry which is to be made is as to what operation the apparatus performs in the assessee's business. The relevant test to be applied is: Does it fulfill the function of a plant in the assessee's trading activities ? And Is it a tool of the taxpayer's trade ?"

...

" The thing need not be a part of the machine used in the manufacturing process but could be merely an apparatus used in carrying on the business but having a degree of durability. Merely because the asset has a passive function in the carrying on of the business, it cannot be said that it is not plant. It may have a passive or an active role. The subject must have a function in the trader's operation and if it has, it is, prima facie, plant, unless there is good reason to exclude it from that category."

8.7. The Delhi High Court, in the said case, where the assessee, being a banking company, claimed depreciation and development rebate in respect of safe deposit lockers, held that lockers were the primary safety article of a bank used for the purpose of carrying on the trade and fell within the expression "plant" and accordingly, confirming the order of the Tribunal, answered the reference in favour of the assessee and against the Revenue.

8.8. As the issue referred in the last question is already dealt with elaborately by the Delhi High Court in the decision cited supra, with which we are in full agreement, the reference is answered in the affirmative, against the Revenue and in favour of the assessee.

T.C.(R) No.90 of 2001 (R.A.No.256/Mds/97) with reference to the assessment year 1990-91:

9.1. In respect of T.C.(R) No.90 of 2001 with reference to the assessment year 1990-91, the Tribunal has referred the following questions of law for our consideration:

"1. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the amounts collected by the assessee from lessees towards sales tax represented only contingent deposits and (therefore questioning the directions of the Commissioner of Income-tax under sec.263 on this issue) ?

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2. Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that the assessee is entitled as revenue deduction under sec.37 (1) the expenditure incurred by it in partitions, false ceilings, etc. in the assessee's own premises used for housing lockers ?

3. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee is entitled to depreciation at the rate applicable to a plant at 33 1/3rd on its buildings housing the safe deposit lockers ?

4. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the expenditure incurred on false ceiling, partition, etc. in the assessee's lease hold premises were revenue in nature ? "

9.2. The assessing officer, while completing the assessment under section 143(3) of the Act, during the assessment year 1990-91, invoking section 43B of the Act, added the amounts collected by the assessee from the lessees on lease rentals as contingent deposit to the income of the assessee, as the same has not been paid to the Government. He also disallowed the claim of the assessee with regard to the depreciation on building housing lockers at 33 1/3% treating it as plant and also treated the partitions, etc. made for housing lockers as furniture and fixtures and allowed depreciation as such. On appeal, the Commissioner upheld the action of the assessing officer, but, on further appeal by the assessee, the Tribunal, following its earlier order, held the issues in favour of the assessee. Hence, the present reference with the questions referred to above.

9.3. With respect to the first issue, it has already been answered in T.C.(R) Nos.87 and 93 of 2001 in the earlier portion of the judgment and hence, need not be dealt with again. Accordingly, the first issue is answered in the negative, in favour of the Revenue and against the assessee.

9.4. With respect to the second issue, in T.C.(R) No.89 of 2001 for the assessment year 1988-89, following the earlier decision of this Court on a reference made with regard to the similar issue in COMMISSIONER OF INCOME-TAX v. OOTY DASAPRAKASH [(1999) 237 I.T.R. 902], referred supra, the issue is answered in favour of the assessee. Following the same, the second issue is answered in the affirmative, in favour of the assessee and against the Revenue.

9.5. With respect to the third issue also, in T.C.(R) No.89 of 2001 for the assessment year 1988-89, the reference is answered in favour of the assessee and against the Revenue, agreeing with the views taken by the Delhi High Court in COMMISSIONER OF INCOME-TAX v. PUNJAB AND SIND BANK, (2000) 244 I.T.R. 393, referred supra. Hence, the reference with regard to the third issue is also answered in the affirmative, in favour of the assessee and against the Revenue.

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9.6. With respect to the last issue, viz., whether the expenditure incurred on false ceiling, partition, etc. in the assessee's lease hold premises were revenue in nature, the same issue was referred earlier to this Court in COMMISSIONER OF INCOME-TAX v. DASAPRAKASH [(1978) 114 I.T.R. 210], wherein the issue was answered in favour of the assessee, holding that the expenses on decorated mirrors, plaster-moulded roof, plywood panels, etc. were incurred with a view to beautify the premises and to keep the place fit and hence, they cannot be said to be of an enduring nature as the items for which they were used be of no use with reference to any other place and they cannot also be removed and used and they are just fixed in the walls so that they would present an inviting appearance to the customers assembled there and hence, the expenses were allowable as a deduction under section 37 of the Act.

9.7. In view of the above settled proposition, the last issue is also answered in the affirmative, in favour of the assessee and against the Revenue.

T.C.(R) No.91 of 2001 (R.A.No.257/Mds/97) with reference to the assessment year 1991-92:

10.1. In respect of T.C.(R) No.91 of 2001 with reference to the assessment year 1991-92, the Tribunal has referred the following questions of law for our consideration:

> "1. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the amounts collected by the assessee from lessees towards sales tax represented only contingent deposits and therefore questioning the directions of the Commissioner of Income-tax under sec.263 on this issue ?
>
> 2. Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that the assessee is entitled as revenue deduction under sec.37 (1) the expenditure incurred by it in partitions, false ceilings, etc. in the assessee's own premises used for housing lockers ?
>
> 3. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee is entitled to depreciation at the rate applicable to a plant at 33 1/3rd on its buildings housing the safe deposit lockers ?"

10.2. For the assessment year 1991-92, the assessing officer added the amounts collected by way of contingent deposit from the lessees towards sales-tax on lease rentals to the income of the assessee, pursuant to the order of the Commissioner under Section 263 of the Act, by invoking section 43B of the Act, as the same had not been paid to the Government. The assessing officer also disallowed the claim of the assessee with regard to the deduction under Section 37(1) of the Act for the expenditure

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incurred in partitions, false ceilings, in the assessee's own premises and also with regard to the rate of depreciation adopted by the assessee on its buildings housing the safe deposit lockers by treating it as plant. The Commissioner, upheld the disallowance under section 43B and also upheld the order of the assessing officer on the other two issues. On appeal, the Tribunal, following its earlier decision, held the issues in favour of the assessee. Hence, the present reference.

10.3. The issue referred in the first question is already answered in T.C.(R) No.87 and 93 of 2001 in favour of the Revenue. Hence, the reference with regard to the first issue is answered in the negative, in favour of the Revenue and against the assessee.

10.4. With regard to the second issue also, in T.C.(R) No.89 of 2001 for the assessment year 1988-89, following the earlier decision of this Court on a reference made with regard to the similar issue in COMMISSIONER OF INCOME-TAX v. OOTY DASAPRAKASH [(1999) 237 I.T.R. 902], referred supra, the issue is answered in favour of the assessee. Following the same, the reference with regard to the second issue is answered in the affirmative, in favour of the assessee and against the Revenue.

10.5. The third issue referred to above is also answered in T.C.(R) No.89 of 2001 for the assessment year 1988-89, in favour of the assessee agreeing with the views taken by the Delhi High Court in COMMISSIONER OF INCOME-TAX v. PUNJAB AND SIND BANK, (2000) 244 I.T.R. 393, referred supra. Hence, the reference with regard to the third issue is answered in the affirmative, in favour of the assessee and against the Revenue.

T.C.(R) Nos.92 and 94 of 2001 (R.A.Nos.258 and 260/Mds/97) with reference to the assessment years 1992-93 and 1989-90:

11.1. In respect of T.C.(R) Nos.92 and 94 of 2001 with reference to the assessment years 1992-93 and 1989-90, the Tribunal has referred the following questions of law for our consideration:

> "1. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the amounts collected by the assessee from lessees towards sales tax represented only contingent deposits ?
>
> 2. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee is entitled to depreciation at the rate applicable to a plant at 33 1/3rd on its buildings housing the safe deposit lockers ?

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11.2. For the assessment years 1992-93 and 1989-90, the assessing officer added the amounts collected by the assessee from the lessees as contingent deposit towards sales-tax on lease rentals to the income of the assessee, by invoking section 43B of the Act, as the same had not been paid to the Government. He also disallowed the claim of the assessee for depreciation on building housing lockers at 33 1/3% treating it as plant. The Commissioner confirmed the addition of contingent deposit and also upheld the disallowance of depreciation on building housing lockers. But, the Tribunal held the issues in favour of the assessee following its earlier order. Hence, the present reference with the questions referred to above.

11.3. With respect to the issue referred in the first question, the same is already answered in T.C.(R) No.87 and 93 of 2001 in favour of the Revenue. Hence, the reference with regard to the first issue is answered in the negative, in favour of the Revenue and against the assessee.

11.4. The second issue referred to above is also answered in T.C.(R) No.89 of 2001 for the assessment year 1988-89, in favour of the assessee agreeing with the views taken by the Delhi High Court in COMMISSIONER OF INCOME-TAX v. PUNJAB AND SIND BANK, (2000) 244 I.T.R. 393, referred supra. Hence, the reference with regard to the second issue is answered in the affirmative, in favour of the assessee and against the Revenue.

The references are answered accordingly as stated in the respective tax cases.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sra

To

1.The Assistant Registrar,
Income-Tax Appellate Tribunal
Rajaji Bhavan, III Floor,
Besant Nagar, Chennai - 90.(5 copies)

2.The Secretary,
Central Board of Direct Taxes,
New Delhi.(3 copies)

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3. The Commissioner of Income Tax
   (Appeals), Coimbatore.

4.The Commissioner of Income Tax,
  Coimbatore.

5.The Deputy Commissioner of
  Income-tax, Special Range-I,
  Coimbatore.

1 cc To Mr.R.Vijayaraghavan, Advocate, SR.843.
6 cc To Mr.N.Muralikumaran, Advocate, SR.182 to 187.

Tax Case (R) Nos.87 to 94
of 2001

MS(CO)
SR, KK, KM, SG, GP, NM, RVL 09.04.2007

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